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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,486	02/12/2001	Monisha Ghosh	US 010027	9502

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
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BRIARCLIFF MANOR, NY 10510

EXAMINER

WONG, ALLEN C

ART UNIT PAPER NUMBER

2613

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/781,486	<b>Applicant(s)</b> GHOSH, MONISHA	
	<b>Examiner</b> Allen Wong	<b>Art Unit</b> 2613	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ They raise the issue of new matter (see NOTE below);

(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 5-8, 11-16, 19-22 and 25-29.

Claim(s) rejected: 1-4, 9, 10, 17, 18, 23 and 24.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).


10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_.

  
 Allen Wong  
 Primary Examiner  
 Art Unit: 2613

Continuation of 11. does NOT place the application in condition for allowance because: Continuation of 11. does NOT place the application in condition for allowance because: All of the limitations of the claims have been addressed in the previous Office Action sent on 8/31/05. Regarding page 14 of applicant's remarks, applicant states that rejection based on Jun is improper. The examiner respectfully disagrees. There is nothing improper about using Jun since the applicant's application filing date 2/12/01, and Jun's application filing date is 11/28/00 and foreign priority date is 6/12/00, both of Jun's dates are definitely prior to the present application's filing date. Thus, Jun is a valid reference with a valid effective date prior to the applicant's US filing date. Applicant argues hindsight reasoning was used. The examiner respectfully disagrees. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art to combine the teachings of Jun and Betts, as a whole, for implementing the data switches so as to guide the full rate or low rate data packets to their proper destination for receiving and viewing television programs and other programming in an efficient, precise manner. Regarding page 15-16 of applicant's arguments, applicant attempts to argue that Lyons does not disclose each of one or more of the data bytes containing both bearing bits and non-information bearing bits. The examiner respectfully disagrees. Lyons teaches that each of one or more of the data bytes containing both bearing bits and non-information bearing bits, as suggested in col.3, ln.1-11 and col.6, ln.5-11, where Lyons asserts that each one or more of the data byte contain important data and non-important data, ie. bearing bits non-information bearing bits. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Jun and Lyons, as a whole, for receiving and viewing HDTV television programs and other programming in an efficient, precise manner, as disclosed in Lyons' col.2, lines 44-49. Thus, claim 1 is met. Claims 2-4 are rejected for at least similar reasons as claim 1. Regarding pages 17-22 of applicant's arguments about claims 17 and 23, applicant states that Lyons does not disclose each of one or more of the data bytes containing both bearing bits and non-information bearing bits. The examiner respectfully disagrees. See above analysis for claim 1. The corresponding dependent claims 18 and 24 are rejected for at least similar reasons as claims 17 and 23. Again, on page 22 of applicant's remarks, applicant states that rejection based on Jun is improper. The examiner respectfully disagrees. There is nothing improper about using Jun since the applicant's application filing date 2/12/01, and Jun's application filing date is 11/28/00 and foreign priority date is 6/12/00, both of Jun's dates are definitely prior to the present application's filing date. Thus, Jun is a valid reference with a valid effective date prior to the applicant's US filing date. Applicant argues hindsight reasoning was used. The examiner respectfully disagrees. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art to combine the teachings of Jun and Betts, as a whole, for implementing the data switches so as to guide the full rate or low rate data packets to their proper destination for receiving and viewing television programs and other programming in an efficient, precise manner. Regarding pages 23-25 of applicant's arguments, applicant argues that Betts does not disclose the Reed-Solomon encoder or a data interleaver, the multiplexer or the exclusive OR unit. Jun already discloses the Reed-Solomon encoder, a data interleaver, the multiplexer and the exclusive OR unit. Jun does not specifically disclose a first data packet switch before said Reed Solomon encoder capable of determining whether a data packet is a full rate data packet or a half rate data packet, said first data packet switch capable of sending a full rate data to said Reed Solomon decoder and capable of sending a half rate data packet to said data interleaver; and a second data packet switch after said trellis encoder capable of determining whether a data packet is a full rate data packet or a half rate data packet, said second data packet switch capable of sending a full rate data packet to a multiplexer and capable of sending a half rate data packet to an exclusive OR unit. However, Betts teaches the use of two data switches, as disclosed in fig.1, elements 16 and 42. Also note Betts' switch 42 is located after the trellis encoder, and switch 16 can be located after the data randomizer 10, and col.2, ln.37-43 discloses the utilization of exclusive OR operations for permitting the transmission of data to an exclusive OR unit. Therefore, it would have been obvious to one of ordinary skill in the art to combine the teachings of Jun and Betts, as a whole, for implementing the data switches so as to guide the full rate or low rate data packets to their proper destination for receiving and viewing television programs and other programming in an efficient, precise manner. Both Jun and Betts are combinable and useable together because both references pertain to the same analogous data communication and data distribution environments. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art to combine the teachings of Jun and Betts, as a whole, for implementing the data switches so as to guide the full rate or low rate data packets to their proper destination for receiving and viewing television programs and other programming in an efficient, precise manner. Also, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Dependent claim 10 is rejected for at least similar reasons as claim 9. Thus, the rejection of the claims is maintained.